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VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWB-204
Washington, DC 20554

Re: Ex parte, CC Docket No. 02-33, Appropriate Framework for Broadband
Access to the Internet Over Wireline Facilities; CC Docket No. 01-337,
Review of Regulatory Requirements for Incumbent LEC Broadband
Telecommunications Services

Dear Ms. Dortch,

Throughout the notices of proposed rulemaking in the above captioned proceedings the Commission goes to great lengths to portray the broadband services market as one characterized by a level of intermodal competition sufficient for the Commission to question the role of continued regulation. In doing so the Commission frequently cites the existence of multiple broadband services platforms, including DSL, cable modem services, satellite broadband services and terrestrial and mobile wireless services. However, in the 18 months that have transpired since the initiation of these proceedings, the much heralded intermodal competition from three or more competing networks has failed to materialize.

With each passing day it becomes clearer that today's broadband services market has become a race between only two horses: DSL and cable modem services. Recent news brings further evidence that the threat of broadband services competition from satellite providers will not materialize in the near term. According to industry officials there is "no market" for these services today, requests for the withdrawal of FCC applications for use of satellite spectrum have increased and "more licenses are being surrendered in the Ka-, Ku and [] V-bands."¹ This development, together with the paucity of meaningful competition from the fixed and mobile wireless providers, leaves the Commission in the unusual position of relying upon a monopoly in some local

¹ Jeanene Timberlake, *Industry Sees Decline in Interest in Satellite Broadband – Industry: 'Not Right Now'*, Communications Daily, July 2, 2003, at p. 2. (quoting industry sources)


markets and a duopoly in others to protect the public's interest in a competitive broadband services market.² This is not the outcome the Commission envisioned when these proceedings were introduced.

No one can argue that technology some day will provide robust broadband services competition from three or more competing network providers. Recent developments in the deployment of broadband services over power lines *may* provide that competition at a future date. However, as the Commission contemplates the correct time to deregulate broadband services, the Commission must remain focused on the existence of actual broadband services competition in the market today and not the potential for competition in the future. As the market's experience with broadband services delivered via satellite demonstrates, until a viable business plan for providing these services over new platforms is developed the Commission can not rely upon these services to protect the public interest and facilitate the development of a competitive broadband services market.

Just as the satellite industry has begun to reassess its ability to compete in today's broadband services market, so too must the Commission reassess the conditions present in today's broadband services market and step back from a plan to further deregulate the broadband services market. Indeed, failure to do so would be contrary to the public interest.

Consistent with section 1.1206 of the Commission's rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,



cc: C. Libertelli
D. Gonzales
M. Brill
J. Rosenworcel
L. Zaina
S. Bergmann
W. Maher
J. Carlisle
M. Carey
B. Olson
D. Cooper
T. Natoli

² Chairman Powell denounced this very outcome in connection with the Echostar-DirecTV Merger, stating: "At best, this merger would create a duopoly in areas served by cable; at worst it would create a merger to monopoly in unserved areas. Either result would decrease incentives to reduce prices, increase the risk of collusion, and inevitably result in less innovation and fewer benefits to consumers. That is the antithesis of what the public interest demands."